

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 Peter J. Hellman,

5 Plaintiff,

6 v.

7 Greystone Nevada, LLC, *et al.*,

8 Defendants.
9

Case No. 2:20-cv-00559-JCM-BNW

ORDER re ECF No. 37

10 Before the Court is Defendants' Greystone Nevada, LLC and Lennar Sales Corp. motion
11 to compel a second independent medical examination ("IME") of Plaintiff. ECF No. 37. The
12 opposition is at ECF No. 43, and the reply is at ECF No. 47.

13 The Court heard argument on this matter on October 12, 2021.¹ *See* ECF No. 54. The
14 parties are familiar with the arguments, so the Court does not repeat them here.

15 As mentioned during the hearing, there appear to be two issues before the Court: (1)
16 whether Plaintiff should be subject to a second IME, and 2) whether the report of the first IME
17 (by Dr. Manning) should have been turned over "upon request," or whether it is subject to the
18 expert discovery deadlines set for in the discovery plan and scheduling order.

19 **I. Second IME**

20 There is no rule prohibiting having a Plaintiff undergo more than one IME. In fact, if
21 multiple conditions are at issue, the court can order multiple examinations. *Ornelas v. S. Tire*
22 *Mart, LLC*, 292 F.R.D. 388, 392 (S.D. Tex. 2013). Here, there are several conditions of Plaintiff
23 "in controversy."² And while, as Plaintiff argues, there may well be several "one-stop-shops" that
24 could have examined all conditions at issue, the rules do not restrict Defendants to such a
25 requirement.
26

27 ¹ The Court intended to have an Order for the parties sooner. Unfortunately, other matters have prevented the Court
28 from doing so.

² The Court relies on Plaintiff's answers to interrogatories and those provided during his deposition.

1 The fact that Defendants' notice could have been clearer in terms of what Dr. Manning would be
2 examining, his declaration makes clear that he examined Plaintiff's knee and that another surgeon
3 would be examining the back or spine. *See* ECF Nos. 43-1 and 38-1. Given this declaration,
4 Plaintiff's argument that it should satisfy itself that Dr. Manning's examination did not include
5 the back and spine before ordering a second IME lacks traction.

6 Accordingly, based on the above, the Court finds good cause for Plaintiff to submit to a
7 second IME with Dr. Forage.

8 **II. Timing for Disclosure of IME with Dr. Manning**

9 In addition to conducting an IME, Dr. Manning has been hired by Defendants as one of
10 their experts. The main issue in dispute is whether Defendants needed to turn over the Rule 35
11 report "upon request" or whether the deadlines for expert disclosures applied. Expert disclosures
12 were due in this case on November 7, 2021. ECF No. 32. As a result, it appears that this issue is
13 now moot as Defendants should already have turned over the report in question.


14 **III. Fees**

15 The Court will award fees. Fed. R. Civ. P. 37(a)(5). There is no question that Plaintiff is
16 subject to a second IME. The issue of whether Dr. Manning's report should have been turned
17 over sooner is a separate issue, and for which a motion was ultimately filed (ECF No. 53), and
18 does not dictate whether a second IME is to take place. The parties are ordered to meet and confer
19 on the issue of fees within 10 days of this Order.

20 **IV. Conclusion**

21 Based on the above, it is ordered that ECF No. 37 is **GRANTED**.

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23 DATED: December 25, 2021.

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26 BRENDA WEKSLER
27 UNITED STATES MAGISTRATE JUDGE
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